

In the United States Patent and Trademark Office
on Appeal from the Examiner to the Board
of Patent Appeals and Interferences

In re Application of: James Thompson et al.
Serial No.: 09/767,374
Filing Date: January 22, 2001
Group Art Unit: 2452
Confirm: 2543
Examiner: Dohm Chankong
Title: DISTRIBUTED NETWORK COMMUNICATION
SYSTEM WHICH ALLOWS MULTIPLE WIRELESS
SERVICE PROVIDERS TO SHARE A COMMON
NETWORK INFRASTRUCTURE

Commissioner for Patents
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REPLY BRIEF

Appellants have appealed to this Board from the decision of the Examiner, contained in a Final Office Action mailed October 24, 2011 (the "Final Office Action"), finally rejecting Claims 146-166, 168-172, 174-177, 179-221, 256-274, 276-279, 286-301, and 303-311. Appellants mailed a Notice of Appeal on January 24, 2012 and filed an Appeal Brief on April 16, 2012. The Examiner responds in an Examiner's Answer mailed June 13, 2012 (the "Examiner's Answer"). In response, Appellants respectfully submit this Reply Brief.

ARGUMENTS

The Examiner's Answer consists of a restatement of arguments presented in the Final Office Action, along with a section responding to Appellants' arguments presented in the Appeal Brief. To reduce the burden on the Board, Appellants specifically address only the section of the Examiner's Answer directed to Appellants' arguments in the Appeal Brief. The remaining portions of the Examiner's Answer have already been addressed in Appellants' Appeal Brief.

A. **Short does not disclose "selectively providing network access to the portable wireless computing device based on the received system identification information and the determined geographic location of the portable wireless computing device"**

As discussed in the Appeal Brief at 13-14, the cited references do not teach or suggest, "the first access point selectively providing network access to the portable wireless computing device based on the received system identification information and the determined geographic location of the portable wireless computing device, the network access provided using the determined first VLAN," as Claim 146 recites.

As teaching these claimed concepts, Examiner now relies on additional portions of *Short* at columns 7, lines 24-38, column 8, lines 19-28, column 6, lines 58-61, and column 9, lines 17-20. Examiner's Answer, p. 37-39. However, these newly-cited portions do not change the analysis, and as previously discussed, *Short* teaches away from the subject matter of Appellants' claims. Appeal Brief at 13-14. In particular, *Short* does not provide network access based on system identification information of any portable wireless computing device or providing network access based on the "determined geographic location of the portable wireless computing device." Instead, *Short* discloses an initial installation configuration process that grants network access to a specific location, such as a specific port in a hotel room, rather than a specific user or host residing at the location. *See Short*, col. 6, ll. 58-61; *see also id.* at col. 9, ll. 38-50.

Indeed, the portions cited by the Examiner in his Answer emphasize this concept. For example, *Short* teaches that:

By using VLAN technology, the gateway device can ***provision subscriber access to the network on a localized port basis***. For example, in a multi-resident dwelling environment, a network service provider may want to provision Internet access to individual units or apartments; ***each unit is assigned a VLAN ID (a port-location tag)***. In this example, a resident within

the unit can choose to subscribe to the service and the gateway device will then allow Internet access from the resident's unit, ***regardless of which host or who the user is within the unit.***

Short, 7:25-35 (emphasis added).

As the cited portion makes clear, *Short* teaches away from providing network access to a portable wireless computing device based on at least two specific parameters of the portable wireless computing device: its system identification information and its geographic location. *Short* is clear. It describes a “network system . . . grant[ing] network access to a specific location (e.g. a hotel room, a specific apartment address, etc) **rather than a specific user or host residing at the location.**” *Short*, col. 6, ll. 58-61 (emphasis added).

In the Examiner’s Answer, the Examiner cites to column 8, lines 22-29 of *Short* to explain that “[w]hen a user device communicates within a hotel room, all of its packets are marked with the VLAN tag assigned to the room.” Examiner’s Answer, p. 38. On this basis, the Examiner argues that “[i]f the packets do not have this tag, then the hotel room, and by extension, the user device within the room, cannot access the network.” *Id.* The Examiner simply mischaracterizes the teachings of *Short*.

At the outset, the preceding paragraph states that “[o]nce the host establishes connections it begins sending out standard IP (Internet Protocol) packets.” *Short*, col. 7, ll. 63-64. In other words, the host is ***first*** granted network access and ***then*** it sends out any packets. Thus, the Examiner is mistaken that “[i]f the packets do not have this [VLAN] tag . . . the user device within the room, cannot access the network.” Examiner’s Answer, p. 38. *Short* clearly grants access before data packets are sent. Indeed, as discussed above, network access may be granted to the specific location before any specific user or host even attempts to connect to the port. *see Short*, col. 9, ll. 38-45; *see also id.* at col. 6, ll. 58-61 (“grant[ing] network access to a specific location . . . rather than [using] a specific user or host residing at the location”).

In addition, the Examiner points to certain portions of Applicants specification to somehow argue that “[i]nterpreting *Short*’s VLAN tags in this manner . . . is consistent with an embodiment disclosed by Appellant’s specification.” Examiner’s Answer, p. 38. The Examiner’s reasoning is legally flawed, because it fails to focus on Applicants’ claim language. The MPEP states that “[t]he key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the **claimed** invention would have been

obvious.” MPEP § 2142 (emphasis added). Accordingly, the Examiner’s focus on certain aspects of the specification that may (or may not) disclose related embodiments is misplaced.

Short fails to teach or suggest both “the first access point determining a geographic location of the portable wireless computing device” and “the first access point selectively providing network access to the portable wireless computing device based on the received system identification information and the determined geographic location of the portable wireless computing device.” Accordingly, Claim 146 is allowable.

Independent Claims 174, 177, 202, 256 and 286-289 include limitations that, for substantially similar reasons are not taught or suggested by the various proposed combinations of the cited references. Accordingly, Appellants respectfully requests the Board to direct the Examiner to issue a Notice of Allowance for Claims 146, 174, 177, 202, 256 and 286-289 and their respective dependent claims.

B. The combination of *Short* and *Sheynblat* is improper because *Short* teaches away from location-based identification tied to a specific user or host residing at a location and would change *Short*’s principle of operation

The Examiner’s proposed combination of *Meier*, *Garrett*, *Short* and *Sheynblat* fails to teach or suggest the combination of elements cited in Claims 303-311, and therefore the Board should reverse the rejection.

As previously discussed in the Appeal Brief at 14-15, in addition to the reasons above for allowing Claims 303-311, the cited references do not teach or suggest “the first access point receiving Global Positioning System (GPS) data from the portable wireless computing device in order to determine the geographic location of the portable wireless computing device,” as these dependent claims require. *Id.* While *Sheynblat* appears to teach the use of “mobile GPS receivers,” *Short* teaches away from location based identification tied to a specific user or host residing at a location. Instead, as discussed above, *Short* teaches “grant[ing] network access to specific location [using a port-location mapping] . . . **rather than [using] a specific user or host residing at the location.**” *Short*, col. 6, ll. 58-61.

The Examiner now argues that “modifying *Short* to include *Sheynblat*’s GPS-based location system does not require replacing *Short*’s port-mapping disclosure. One of ordinary skill in the art would be able to incorporate *Sheynblat*’s GPS teachings into *Short* as an additional method for calculating a device’s location.” Examiner’s Answer, p. 39. The Examiner’s reasoning is flawed. In particular, modifying *Short* to use GPS data from the

portable device changes the principle of operation of *Short*'s disclosure, which is directed to facilitating location-based network management using port-location mappings even in the absence of a specific user or host connected the port. For example, *Short* discloses "configuration upon **initial installation** to accommodate location-based identification" by "configuring the gateway so that VLAN ID's are assigned to individual entities or ports (i.e. room numbers, apartment, units, etc.)" *Id.* at col. 9, ll. 38-45 (emphasis added). In other words, *Short* provides network access *before* any host or user even attempts to connect to the network. Thus, since the proposed modification to *Short* would change its principle of operation, *Sheynblat*'s disclosure is insufficient to render the claims *prima facie* obvious. See MPEP 2143.01. VI (citing *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959)). For these additional reasons, Applicants respectfully request that the Board instruct the Examiner to issue a Notice of Allowance for Claims 303-311.

CONCLUSION

Appellants have demonstrated that the pending claims are patentable over the various proposed combinations of the cited references. Therefore, Appellants respectfully request that the Board to reverse the final rejection and instruct the Examiner to issue a Notice of Allowance with respect to all pending claims.

Although Appellants believe no fees are due, the Commissioner is hereby authorized to charge any additional fees and credit any overpayments to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,
BAKER BOTTS, L.L.P.
Attorneys for Appellants

A handwritten signature in black ink, appearing to read 'K-P' followed by a horizontal line.

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